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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2006

CORAM

THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C. (A) NOS.74 TO 76 & 78 TO 82 OF 2002
(Appeal.30 to 32 & 34 to 38/2002)

T.C.NO.74 OF 2002:

1. A.Rajendran ..Appellant
2. A.Srinivasan ..Appellant in TC 75/2002
3. S.Balaji Manikandan ..Appellant in TC 76/2002
4. R.Mohana Kala ..Appellant in TC 78/2002
5. S.Kalavathy ..Appellant in TC 79/2002
6. A.Srinivasan ..Appellant in TC 80/2002
7. S.Kalavathy ..Appellant in TC 81/2002
8. S.Balaji Manikandan ..Appellant in TC 82/2002

Vs.

The Assistant Commissioner of Income Tax
Special Investigation Circle - III
Coimbatore ..Respondent in all TC cases

Prayer: Tax Case Appeal preferred under Section 260A of the Income Tax Act 1961 against the order of the Income Tax Appellate Tribunal, "C" Bench, Chennai dated 18.4.2002 and made in ITA.Nos.797 to 804 (MDS)/2000 for the Assessment years 1995-96 and 1996-97 respectively against the order of the Commissioner of Income Tax (Appeals) Coimbatore dated 31.3.200 and made in I.T.Appeal Nos.

1. 318-C/98-99
2. 321-C/98-99 & 114-C/99-2000
3. 319-C/98-99 & 113-C/99-2000
4. 317-C/98-99
5. 320-C/98-99 & 112-C/99-2000
6. 321-C/98-99 & 114-C/99-2000
7. 320-C/98-99 & 112-C/99-2000 and
8. 319-C/98-99 & 113-C/99-2000 respectively

against the order of the Assistant Commissioner of Income Tax, Special Investigation Circle III, Coimbatore, Dated 27.3.1998 and made in

1. PAN/GIR.NO.P.T.2814/SIC III/CBE
2. PAN/GIR.NO.P2-3356/SIC III/CBE
3. PAN/GIR.NO.P-790/SIC III/CBE
4. PAN/GIR.NO.P2-2434/SIC III/CBE
5. PAN/GIR.NO.P2-8440/SIC III/CBE

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6. PAN/GIR.NO.P2-8440/SIC III/CBE
7. PAN/GIR.NO.P2-8440.SIC III/CBE and
8. PAN/GIR.NO.B-790/SIC III/CBE respectively

for the Assessment years 1995-96 and 1996-97 upholding the order of the Commissioner of Income Tax (Appeals).

For Appellant : Mr.Aravind P Datar, Senior Counsel for
: Mr.R.Sundaram
For Respondent : Mr.N.Muralikumaran Senior Standing Counsel for Income Tax

COMMON JUDGMENT

(Judgment of the court was delivered by Justice R.Balasubramanian)

Tax Case Nos.74 to 76/2002 stand admitted on the following questions of law:

"(a) Whether in the facts and circumstances, the Income-Tax Appellate Tribunal was correct in law to accept the principle of preponderance of probabilities in holding that the claim of the appellant that the sum of Rs.15,62,500/- received by him by way of gifts through normal Banking Channels was not genuine and that it was liable to be assessed under section 68 of the Income Tax Act, 1961?

(b) Whether in the light of the law established and based on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal is legally justified in concluding that the burden of proof cast on the appellant under section 68 of the Income Tax Act, 1961 has not been discharged and the ingredients for invoking section 68 of the Income Tax Act are present?

(c) Whether in the facts and circumstances of the case, the conclusion of the Tribunal that the claim of gift is not genuine is reasonable and based on relevant material and not perverse?"

T.C.Nos.78 to 82/2002 stand admitted on the following questions of law:

"(a) Whether in the facts and circumstances, the Income Tax Appellate Tribunal was correct in law to accept the principle of preponderance of probabilities in holding that the claim of the appellant that the sum of Rs.15,62,500/- received by him by way of gifts through normal Banking Channels was not genuine and that it was liable to be assessed under section 68 of the Income Tax Act, 1961?

(b) Whether in the light of the law established and based on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal is legally justified in concluding that the burden of proof cast on the appellant under section 68

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of the Income Tax Act, 1961, has not been discharged and the ingredients for invoking section 68 of the Income Tax Act are present?

(c) Whether in the facts and circumstances of the case, the conclusion of the Tribunal that the claim of gift is not genuine is reasonable and based on relevant material and not perverse?"

2. The appellant in each of these appeals is an assessee within the jurisdiction of the respondent. The appellant in T.C.No.75/2002 and the appellant in T.C.No.80/2002 is one and the same. He is the father of the appellant in T.C.No.76/2002 and T.C.No.82/2002 and husband of the appellant in T.C.Nos.79/2002 and 81/2002. The above referred to appellant in T.C.Nos.75 and 80/2002 is the brother of the appellant in T.C.No.74/2002. The appellant in T.C.No.74/2002 is the husband of the appellant in T.C.No.78/2002. The assessment orders in the respective tax cases are as hereunder:

T.C.No.74/2002	- 1995-96
T.C.No.75/2002	- 1996-97
T.C.No.76/2002	- 1995-96
T.C.No.78/2002	- 1995-96
T.C.No.79/2002	- 1996-97
T.C.No.80/2002	- 1995-96
T.C.No.81/2002	- 1995-96
T.C.No.82/2002	- 1996-97

In respect of those "assessment orders", there is a credit entry in favour of the respective assessee as hereunder:

(a) Rs.15,63,600/- credited as NRI gifts received (US$ 50000)
(b) Rs.8,64,500/- credited as NRI gifts received (US$ 25000)
(c) Rs.21,85,604/- credited as NRI gifts received (US$ 25000)
(d) Rs.15,62,500/- credited as NRI gifts received (US$ 50000)
(e) Rs.15,50,000/- received as gift – added as an income of the appellant – source being undisclosed.
(f) Rs.26,47,647/- NRI gift
(g) Rs.21,82,847/- received as a gift from NRI is added as an income of the assessee from undisclosed source.
(h) Rs.8,64,500/- received as a gift from NRI is added as an income of the assessee from undisclosed source.

3. The assessing officer did not accept the explanation offered by the respective assessee that the amount credited to their respective account is a gift from NRI and proceeded to add it as the income of the assessee from an undisclosed source. There were assessment orders for each of the assessee for the assessment years referred to earlier. The assessment order in each case is dated 27.03.1998, 31.03.1999, 27.03.1998, 27.03.1998, 31.03.1999, 27.03.1998, 27.03.1998 and 31.03.1999 respectively. Each of the assessee filed an appeal before the Commissioner of Income Tax (A), Coimbatore, who, by separate order dated 31.03.2000 passed in each case, dismissed the appeal thereby affirming the order of the assessing officer. Thereafter, each assessee filed a separate appeal before the Income Tax Appellate Tribunal, Chennai. All the appeals

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were disposed of by a common order dated 03.08.2001. The Accountant Member affirmed the order of the lower authorities, while the Judicial Member did not agree and therefore, wrote a dissenting judgment. Therefore, the points in controversy were referred by the President of the Appellate Tribunal to the Senior Vice President of the Appellate Tribunal, who, by order dated 20.02.2002, agreed with the finding of the Accountant Member. As a result thereof, the impugned order dated 18.04.2002 came to be passed affirming the order of the lower authorities. The effect of the above proceedings is, the explanation offered by each assessee that the credit entry in their respective account represents only a gift from NRI stands negatived and as a consequence thereof, the respective credit entry is treated as the income of the respective assessee from an undisclosed source. Heard Mr.Aravind P Datar learned senior counsel appearing for the appellant in all these appeals and Mr.N.Muralikumaran learned counsel appearing for the Revenue in all these appeals.

4. There is no dispute on the following facts:

> "The donor is a person by name Sampath Kumar; he is the common donor; the donees are the respective assessees; the gifts from the donor, in respect of which credit entries have been made, were during the period from 08.07.1992 to 19.10.1995; all the gift amounts have been channelised through bank namely, the payments were made by instruments issued by a foreign bank and credited into the respective assessee's account by negotiating it through a bank in India; the donor's father was working as a driver under assessee Srinivasan; the donor is a resident of the United Kingdom; the donor invested huge sums of money in India in movable and immovable properties, including opening factories in and around Coimbatore; the donor appeared in response to a notice issued to him by the Income Tax Authorities and was examined; he produced materials in support of his solvency; proceedings against the donor were initiated for alleged violation of Foreign Exchange Regulation Act; however, the said proceedings were not taken to it's logical end; in other words, the proceedings initiated as referred to above were not continued at all; each of the assessees have credited their books of account with the amount received by them as gifts; besides the donor giving a statement confirming that he had gifted various sums of money to each of the assessee as found reflected in the credit entries made in their books of account, each of the assessees have also given a statement admitting receipt of gift from the donor and crediting it into their respective accounts; the donor, in all, is shown to have brought into India, during the relevant time through proper channel, foreign exchange to the value of US$ 61,06,000, which includes the amounts made by way of gifts in India."

5. Mr.Aravind P Datar learned senior counsel appearing for the appellant in all these appeals would contend that the hierarchy of authorities under the Act had acted only on surmises and conjectures in rejecting the explanation offered by the assessee in each case. According to the learned senior counsel, the assessee had established the following facts namely, "who the donor is; what his capacity is; all the

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transactions are through bank; the respective receipts have been credited into the books of account of the assessee; the donor is an income tax assessee in United Kingdom as well as in India; the donor has every good reason to make gifts" and if these facts are established, then the assessing officer has no right to go behind this and probe further as to why the donor has gifted such huge sum of money. Motivation to make such a large gift would be totally extraneous when the explanation offered by the assessee is found acceptable. In considering the explanation, though the assessing officer and the hierarchy of authorities have a right to probe, such a probe should not go beyond a limit, especially when the assessee had established the earlier referred to facts. In any event, the assessing officer and the hierarchy of other authorities ought to act reasonably and definitely not unreasonably. In these batch of cases, the reasons given by the assessing officer and the higher authorities, in the face of the materials established by the assessee, in rejecting the explanation, are purely on surmises and conjectures. If the explanation offered is rejected arbitrarily and capriciously thereby refusing to draw the legal conclusions that can be drawn on the shown facts, then it would itself be a question of law which the court would be in a position to consider. Therefore the submission made by the learned senior counsel is that an interference is called for at the hands of this court. Learned senior counsel brought to the notice of this court the following judgments in support of his case:

(a) Commissioner of Income Tax Vs. Orissa Corporation P. Ltd. (1986) 159 ITR Pg.78;

(b) Rukmanand Vs. State of Bihar (AIR 1971 SC Pg.746);

(c) Commissioner of Income Tax Vs. Sibal (2004) 269 ITR Pg.429 (Delhi);

(d) Deputy Commissioner of Income Tax Vs. Rohini Builders (2002) 256 ITR Pg.360 (Guj.);

(e) Nemi Chand Kothari Vs. Commissioner of Income Tax (2003) 264 ITR Pg.254 (Gau) – Head notes only.

(f) Muralidhar Lahorimal Vs. Commissioner of Income Tax (2006) 280 ITR Pg.512 (Guj.).

Mr.N.Muralikumaran, learned counsel appearing for the Revenue, while not disputing the facts established on record by the assessee, would still contend that enormous amount of gift made itself probabilises that the receipts are in the nature of a income of the assessee from an undisclosed source. Therefore, the authorities have proceeded to consider the explanation on the touch stone of human probabilities.

6. Before proceeding to analyse the merits and demerits of these batch of cases, let us apply our mind to section 68 of the Income Tax Act and the decided case laws on that section. Under section 68 of the Income Tax Act, hereinafter referred to as "the Act", "when any sum is found credited in the books of account of an assessee and the assessee offers no explanation about the nature and source thereof, or the explanation offered by him is not, in the opinion of the assessing officer, satisfactory, then the sum so credited may be charged to income tax as the income of the assessee of the previous year". In (1963) Vol.49 ITR (SC) Pg.112 (Sreelekha Banerjee & Others Vs. Commissioner of Income Tax), the Supreme Court, while dealing with section 34 of the Income Tax Act, 1922

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(which corresponds to section 68 of the current Act), held that "if the explanation shows that the receipt was not of a income nature, the Department cannot act unreasonably and reject that explanation to hold that it was income. If however, the explanation is unconvincing and one which deserves to be rejected, the Department can reject and draw the inference that the amount represents income etc.,....." Therefore, the principle that can be deduced from the above judgment is, if the explanation of the assessee shows that the receipt was not of a income nature, the Department cannot act unreasonably in rejecting the explanation. In (1995) Vol.214 ITR (SC) Pg.801 (Sumati Dayal Vs. Commissioner of Income Tax), the Supreme Court again reiterated that, while considering the explanation offered by the assessee for the amount credited in his account, the Department cannot, however, act unreasonably. For such a conclusion, the Supreme Court relied upon it's earlier judgment namely, (1963) Vol.49 ITR Pg.112. In (1971) Vol.82 ITR (SC) Pg.540 (Commissioner of Income Tax Vs. Durga Prasad More), the Supreme Court held as hereunder:

> "It is true that an apparent must be considered real only if it is shown that there are reasons to believe that the apparent is not the real. The Taxing Authorities were not required to put on blinkers while looking at the documents produced before them. They are entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents."

The Supreme Court again, in the judgment reported in (1995) 214 ITR Pg.801, had reiterated the law laid down in (1971) Vol.82 ITR (SC) Pg.540 that an apparent must be considered real only if it is shown that there are reasons to believe that the apparent is not the real and that the Taxing Authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. Therefore, it is clear from the above judgments that the burden is on the assessee to show that the receipt is not of a income nature by giving an explanation; the income tax officer is not expected to put blinkers and accept it as it is; it is open to him to probe further and find out whether the apparent is real or not and take a decision on such probing, in the light of human probabilities. However, he should not act unreasonably.

7. Let us now examine the assessment order of the Assistant Commissioner of Income Tax as affirmed by the various higher authorities. In so doing, we should bear in mind the reasons which weighed with the various authorities in rejecting the explanation offered by the assessee, which includes the statement given by the donor confirming the gifts. The Commissioner of Income Tax, in his appellate order, had extracted the reasons which entered the mind of the assessing officer in rejecting the explanation and those reasons alone found favour with the Accounting Member of the Appellate Tribunal (the Judicial Member dissenting) and the Senior Vice President of the Appellate Tribunal. We extract those reasons as hereunder:

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"The said Sampathkumar invested huge sums in India in movable and immovable properties including factories in and around Coimbatore. While examined by the A.O., Shri.Sampathkumar promised to file the source of the same but has so far failed to do so.

The statements given by Shri.Srinivasan and his family members are contradictory. Thus while Shri.Srinivasan stated that Shri.Sampathkumar used to stay with him on his visits in India, his wife and son stated that he used to stay in Hotel Surya.

Although all the donees claim to be close friends of Shri.Sampathkumar, none knows the name of his parents or the parents of his wife.

Shri.Rajendran and Shri.Sampathkumar are not related and belong to different communities.

Shri.Rajendran is not even aware of the fact that Shri.Sampathkumar has two daughters while he stated that Shri.Sampathkumar has one son and one daughter.

The gifts received were in the name of Ariavan Thotan or Suprotoman. Only after enquiry by the department, it transpires that they were aliases of Shri.Sampathkumar.

The nickname was Suprotoman or Toto. Why the alias Ariavan Thotan was used?

The letters of the donor express reciprocation from the donees during his stay in India.

Hon'ble Supreme Court in Durgaprasad More's case has observed that the A.O., is not supposed to put on blinkers while examining documents produced before him.

Although Sampathkumar has a brother, no gifts were made to him and he was working as a driver in Indian Bank, Coimbatore.

The Commissioner of Income Tax (Appeals), after extracting the reasons as referred to above, referred to the case laws reported in (1995) Vol.214 ITR Pg.801 and (1971) Vol.82 ITR Pg.540; extracted the statement of the donor and disposed of the appeal by giving his conclusions in two sentences. The conclusion is as hereunder:

"This is rather shallow and hard to believe. The preponderance of probabilities, the common course of human events as discussed earlier point to the contrary."

In fact, we find that the Commissioner of Income Tax (Appeals) had not even applied his mind independently to any of the materials which entered the mind of the assessing officer, except concluding on the lines indicated above. There is no discussion at all in his order as to how the transaction concerned in this case is opposed to the common course of human events.

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8. In the further appeal, the Appellate Tribunal, after referring to the judgments of the Supreme Court in Durga Prasad More's case and Sumathi Dayal's case and the principles laid down therein as to how the explanation offered by the assessee should be considered, had referred to the judgment of the Delhi High Court in Sumathi Vachani's case (1990) Vol.184 ITR Pg.121 and proceeded to discuss the case on merits in paragraph No.10 of it's order. In the course of discussion, the Accountant Member of the Appellate Tribunal found that the transaction was through regular banking channels and the donor had confirmed the same. Then, after finding fault with the donor not producing proof for the source of investment in India, the Accountant Member simply adopted the same reasons which entered the mind of the assessing officer and thus confirmed the order. The Judicial Member of the Appellate Tribunal had taken upon the trouble of addressing to himself each ground that entered the mind of the assessing officer and had given excellent reasons for not taking those circumstances as acting against the explanation and then decided to agree with the explanation. The Judicial Member also found, at the end of paragraph 20 of his order, that in the context of the capacity and status of the donor and when there is no adverse finding by the Revenue, it must be held that there is a valid gift. In paragraph No.17 of his order, the Judicial Member also found that the Revenue had not proved any consideration for the gift.

9. The Senior Vice President of the Appellate Tribunal - III Member had recorded in his order that, in the course of that hearing, the assessee had given the details and filed copies of the bank drafts or cheques issued by the donor on various dates. However, it appears from his order that he had started the discussion with a pre-conceived notion that clandestine transactions in a good number of cases had emerged out of Coimbatore namely, by engaging agents, by paying them commissions for arranging remittances from foreign countries to India. He had also found in his order that the Accounting Member had noted that the donor is well placed financially; he is an industrialist in Great Britain; established some industries in Coimbatore and building properties. Then, going by the reasons which entered the mind of the assessing officer, which again went into the mind of the Commissioner of Income Tax (Appeals) and the Accountant Member, the Senior Vice President of the Appellate Tribunal - III Member also agreed with the finding of the Accountant Member by concluding that giving donation of such a large sum of money does not sound to be an action of any reasonable man, especially when it is viewed from the point that the assessee is in the business of jewellery. In other words, his conclusion is on the application of preponderance of probabilities.

10. In (1995) 214 ITR Pg.801, the assessee had explained that the credited amounts represent her winnings in races. On facts, it was found that the explanation is unsatisfactory because of the following reasons:

"The assessee has no expertise in races; to accept that a race goer had won jackpot events so many times in a short period of two years, is highly improbable; in the books of account of the assessee, the amount representing travelling expenses of the assessee to travel to Hyderabad and Bangalore have not been debited at all; likewise, losses suffered by

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the assessee in the races have not been shown at all in the books of account and lastly, from the year 1972 onwards, she had stopped going to races". It was noted that from that year onwards, winnings in races were brought within the tax purview. Those reasons were found to be cogent and convincing reasons to reject the explanation offered by the assessee. In (1971) Vol.82 ITR (SC) Pg.540, the Supreme Court was considering the explanation offered by the assessee that "the property, from which income is generated, is the trust property; the sale deed in favour of the assessee shows that he purchased the property as a trustee and there is a subsequent deed creating a trust which records a corpus of Rs.2 lakhs left in the hands of the assessee". In that context only, the explanation, for the various reasons stated in the original order, was rejected.

11. Now let us apply our mind to the explanation offered by the assessee in each case, which is similar. The donor is identified as an industrialist in the United Kingdom. It is shown that the donor is the son of a poor driver, who was driving a car of one of the assessees. The assessees are closely related. The donor was an young boy at that time and having regard to his family poverty, one of the assessees had been helping the donor's father to meet both ends, which enabled the donor's father to give him good education. The donor had declared in his statement that he climbed the ladder only with the help rendered by one of the assessees and from that stage onwards, he did not look back. It is on record that the donor went from strength to strength and spread his wings to Indonesia first and then to United Kingdom, where he is now prominently settled. The donor had obtained a Degree in Bachelor of Engineering. The orders impugned show that the donor is worth about Rs.20 crores and during the relevant time, he had brought about US$ 61,60,000 into India through proper channel. The donor had stated that as a gratitude for the help rendered by one of the assessees to his father, which enabled him to come up in life and that too, to such an exalted position, he had made the gift. All the gifts have come through proper banking channel and there is no hanky panky about it. In fact, the donor appeared on summons by the Income Tax Department and gave all the details. The Senior Vice President, in his concurring order with the Accountant Member, had stated that atleast by that time, the donor had produced all the materials in proof of his claim. Therefore it is clear that the assessees have established the identity of the donor namely, the source, the solvency of the donor and his love and gratitude for the family of the assessees, which made him to make the gift. In fact, the assessing officer himself had referred to a letter dated 08.12.1994 of the donor, which shows that, as one of the assessees was constructing a new house and as it is in progress, any additional resources will enhance the construction progress and that is why he is sending US$ 50000 as his gift. Love knows no bounds. It is seen from the materials available on record that the donor was brought up by the assessees as their family members. It stands established that the name Ariavan Thotan and Suprotoman are the nick names of the donor and it is an alias name. It has also come out on record that those names relate to the donor. There is nothing on record to show that the gifts received by the assessees were sent by any person other than the donor in his own name. Simply because the donor writes letters in his alias name namely, letters dated 08.12.1994 and 27.05.1994, cannot mean that there is a dispute regarding the identity of the donor, especially when the donor appeared pursuant to the notice

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issued by the Income Tax Authorities and affirmed his gifts. The donor is shown to be an income tax assessee not only in the United Kingdom but also in India. In addition to the above, it is not in dispute that the proceedings initiated against the donor under the provisions of the Foreign Exchange Regulation Act was not taken to it's logical end by the Department. This means, the donor had not violated any provisions of the Foreign Exchange Regulation Act.

12. In (1990) 184 ITR Pg.121 (Delhi) (Commissioner of Income Tax Vs. Sunita Vachani), a Division Bench of the Delhi High Court held as hereunder:

> "Even though it may be surprising as to how large sums of money are received by a family in India by way of gifts from strangers from abroad, unless there is something more tangible than suspicion, it will be difficult to regard the moneys received in India from abroad as representing the income of the assessee in India."

That was a case where the gift was from strangers. But that is not the case here. In (2004) 269 ITR Pg.429 referred to supra, the Delhi High Court accepted the declaration of the donors that they had gifted the amounts to the assessees on account of their love and affection for them. That is exactly the case here. In (2003) 264 ITR Pg.254 referred to supra, the Guwahati High Court held that in order to establish the receipt of a cash credit as required under section 68 of the Income Tax Act, 1961, the assessee must satisfy three conditions namely, (1) identity of the creditor (2) genuineness of the transaction and (3) credit worthiness of the creditor. Once this is established, then, it is held that the assessee has discharged his burden. The assessees in the present appeals had done that. Then, going by the Delhi High Court judgment referred to supra, something more tangible than suspicion would be necessary to reject the explanation offered by each of the assessees. In (2006) 280 ITR Pg.512 referred to supra, the Gujarat High Court found fault with the Tribunal, after the assessee satisfactorily explained the reasons, that motivation for making the gift having not been established, the explanation must be rejected. The Gujarat High Court held that, once the assessee discharges his burden of prooving the relevant facts, then motivation for making the gift is irrelevant. As we have already noted, in this case, the donor had shown his love and gratitude for the family of the assessees; he wanted to reciprocate by showing his gratitude by making the gift; he has channelised the transaction through banking channel and he had confirmed in his declaration that he had made the gifts. In the said circumstances, it is not for the Income Tax Authorities to go one step further and read his mind as to why he has decided to make a substantial gift. Simply because close relatives are not shown as the beneficiaries of such gift, the gift itself would not be invalidated in law, is the settled position in law.

13. Now, if we apply our mind to the various reasons, which we have extracted in the earlier portion of this judgment and which had entered the mind of the authorities under the Act to reject the explanation, we have no doubt at all that the authorities were in the realm of imagination, surmises and conjectures.

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14. On the facts of this case, when the assessees have established all the requirements of section 68 of the Income Tax Act as referred to above, rejection of those explanations is definitely due to arbitrary and unreasonable exercise of power. In (1986) 159 ITR Pg.78 referred to supra, the Hon'ble Supreme Court of India was referring to one of it's earlier decision reported in (1959) 37 ITR Pg.288 (Lalchand Bhagat Ambica Ram Vs. Commissioner of Income Tax) wherein, the Supreme Court has held as hereunder:

> "This court held that when a court of fact arrives at its decision by considering material which is irrelevant to the enquiry, or acts on material, partly relevant and partly irrelevant, and it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its decision, a question of law arises, whether the finding of the court is not vitiated by reason of its having relied upon conjectures, surmises and suspicions not supported by any evidence on record or partly upon evidence and partly upon inadmissible material. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises, nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures and surmises. In that case, the so-called hundi racket in which the assessee was alleged to have been involved was not proved. That was only a suspicion of the Revenue."

The Supreme Court in (1986) 159 ITR Pg.78 referred to supra, once again referred to another earlier decision of that court reported in (1961) 41 ITR Pg.135 (Homi Jehangir Gheesta Vs. Commissioner of Income Tax) wherein, it was held as hereunder:

> "It was further observed that in determining whether an order of the Appellate Tribunal would give rise to a question of law, the court must read the order of the Tribunal as a whole to determine whether every material fact, for and against the assessee, had been considered fairly and with due care; whether the evidence pro and con had been considered in reaching the final conclusion; and whether the conclusion reached by the Tribunal had been coloured by irrelevant considerations or matters of prejudice."

It was further held in (1961) 41 ITR Pg.135 that in considering probabilities properly arising from the facts alleged or proved, the Tribunal did not indulge in conjectures, surmises or suspicions.

15. In the light of the facts available in this case; the reasons which entered the mind of the authorities to reject the explanation offered by the assessee in each case and in the context of the case laws referred to by us above, we have no doubt at all that the explanation offered by the assessee in each case has been arbitrarily and unreasonably rejected. All the reasons, we have no doubt at all, are in the realm of surmises, conjectures and suspicions, which approach stands totally

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prohibited by the decided case laws referred to above. We are fully conscious that the Appellate Tribunal is the final fact finding body. But on the facts established, the authorities under the Act have failed to draw the only conclusion that is possible legally and logically. Therefore, such a decision definitely raises a question of law warranting consideration at our hands. Accordingly, all the questions of law, on which the tax appeals are admitted, are answered in favour of the assessee and against the Revenue.

Vsl

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Assistant Registrar,
The Income Tax Appellate Tribunal, Rajaji Bhavan,
Besant Nagar, Chennai-90.

2.The Commissioner of Income Tax (Appeals),
Coimbatore.

3.The Asst. Commr.of Income Tax,
Special Investigation Circle – III, Coimbatore

4.The Income Tax Appellate Tribunal, "A" Bench, Chennai

5. The Income Tax Appellate Tribunal, “C” Bench, Chennai.

6. The Secretary,
Central Board of Direct Taxes, New Delhi.

+ 8 CC To Mr.N.Muralikumaran, Senior Standing Counsel for IT.
SR.15903 to 15910.
+ 2 CC To Mr.R.Sundaram, Advocate, SR NO.15653 & 15654.

T.C (A) NOS.74 TO 76/2002 &
78 TO 82 OF 2002

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